Supreme Court, U.S.
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No. 88-1478

In The

Supreme Court of the United States

October Term, 1988

CORPUS CHRISTI TAXPAYERS ASSOCIATION, TOM HUNT and JOE O'BRIEN,

Petitioners,

vs.

CITY OF CORPUS CHRISTI, TEXAS and STATE OF TEXAS,

Respondents.

Petition for Writ of Certiorari To the United States Court of Appeals for the Fifth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS IN REPLY to NEW MATTER (Rules 16 and 22)

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COUNTERSTATEMENT OF ISSUES IN REPLY BRIEF

1- Are the Constitutional rights of Petitioners (Amendment XIV, due process; 42 USC Sec. 1983; 28 USC Sec. 1343) to prevail inviolate, or does the lower Federal court lack jurisdiction of the subject matter due to existence of a prior state judgment?

2- Does this petition raise only frivolous issues, in violation of Rule 49.2?

3- Are Petitioners entitled to relief as requested herein?

This reply brief of Petitioners presents new matter: recent litigation. Also, this reply brief responds to two new issues raised in the City's brief in opposition to certiorari.

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1-NEW MATTER: Other Litigation

The Petitioners (taxpayers of Corpus Christi complaining of a denial of due process by a state trial court which wrongfully dismissed their case) call to the attention of the Court three new matters not available at the time of their last filing with the Court.

First, a recent Texas Supreme Court decision reconfirms Texas law. The court wrote: A "summary judgment is proper only if the movant establishes that there are no genuine issues of fact and that he is entitled to judgment as a matter of law." *Rodriguez v. Naylor* (Tx.Suprm. Ct, 01/25/89) 763 SW2d 411, 412. Texas state court rulings in the instant case, dismissal with affirmance on appeal, are contrary to Texas law as set forth in *Rodriguez*, which cites and relies on other Texas court decisions rendered before the judgments in the instant case. By failing to apply the Texas law to Petitioners' appeal, the Texas supreme court denied Petitioners due process of law.

As stated in this Petition for Certiorari (p. 11) "a genuine issue as to a material fact" existed: Petitioners asserted a tax increase of 16.8% (App. p. 32) whereas the Respondent (City) denied that there was any increase in tax. The City admitted a genuine issue of fact existed. App. p. 36. A tax increase required that a public hearing be held, but no such hearing was held on the tax increase. In view of that controverted, material fact the trial court's granting of a summary judgment and dismissal, was error. That error, although properly asserted in the state appellate courts, was affirmed and Petitioners were denied due process of law.

A second material new matter is called to the attention of the Court: an appeal to the U.S. Supreme

Court, newly filed, which has not yet been docketed, *M&M Construction Co. v. Great American Insurance Co.* (received by the Clerk on February 21, 1989). This appeal presents another instance of the abusive practice of Texas trial court judges: the arbitrary granting of motions for summary judgments. The Petition describes this practice as common in Texas, Pages 16-17, as "patterns of abuse by state courts" and "In the Texas court system arbitrary procedures, such as arbitrary dismissals, are not an uncommon event." The *M&M* case presents one more abuse of discretion by a Texas trial court judge resulting in an arbitrary summary judgment, dismissal and denial of due process. In the *M&M* case dismissal was granted only by reason of the fact that pleadings filed in the case were simply ignored. See attached Exhibit A, which reproduces page 14 of *M&M* Statement of Jurisdiction. See also attached affidavit, Exhibit B.

Third, in *Browning-Ferris Industries, Inc. v. Kelco Disposal Inc.* (now pending before U.S. Supreme Court) involving the Constitutionality of an alleged "excessive fine" imposed by a state court system, the lower Federal courts had jurisdiction. During oral arguments Justice O'Connor referred to a "substantial expansion" of appeals in the Federal court system as well as the Supreme Court if it was held that the VIII Amendment applies to punitive awards by state courts. Incidentally, the scope of the XIVth Amendment is quite clear: its very purpose was to apply to the states to limit abuses of citizens by the states. Furthermore, it contains no wording to exclude state court judges. Wording of the civil rights statute, 42 USC Sec. 1983 is clear enough and broad enough, "Every person" with no wording to exclude state

court judges. The Federal district court has jurisdiction, 28 USC Sec. 1343. The wording of this statute has been ignored, but it should not be. Note it contains no wording to exclude state court adjudications. See *Rizzo v. Goode* (1976) 423 US 362. The essential issue here, the wrongful dismissal by the trial court, certainly was not ruled upon by the trial court, nor was it specifically ruled upon by appellate courts.

2-New Factual Issue: Denial of Public Hearing

The City in its Brief raises for the first time a new issue: it " . . . specifically denies that Petitioners were denied a hearing . . . ". City Briet, p. 4. The Texas Constitution, Article 8, Sec. 21, required that the City *"holds a public hearing on the proposed [tax] increase"*. The City's Brief attempts to deceive. As a matter of fact city council did actually hold a "meeting", to be distinguished from the prescribed "public hearing on the proposed increase". At the Corpus Christi city council "meeting" (the word used in City's brief) Petitioners' attorney appeared and made a twelve minute presentation (video-cassette available) discussing the City's irregular tax procedures which were in violation of Texas law. Petitioners contend the city officials did not hold the required "public hearing". As to a "public hearing on the proposed [tax] increase", none has ever been held by the City. To resolve this factual issue, this case should be remanded, and the dismissal set aside.

This paragraph is in error, and should not have been inserted in the City's Brief. The City's Brief contains

numerous other like errors, all of which are beyond the scope of this Brief of Petitioners.

3-Reply to City's Cross-Appeal Seeking Damages

The City asks for damages under Rule 49.2, based on an allegation of this petition being frivolous, stating that the question of jurisdiction "is well settled", and asserts "flawed logic and distortions of the principles cited". Petitioners remind the Court that the issue here involves a Constitutional right denied Petitioners by a state court in violation of the XIVth Amendment, which contains no words excluding state court systems from its scope. And the supporting jurisdictional statute, 28 USC Sec. 1343, giving Federal district courts jurisdiction over civil rights cases, contains no words excluding state court judges from its scope.

The flawed logic here is found in decisions of the lower Federal courts. Their decisions ignore 28 USC Sec. 1343 and use "subject matter jurisdiction" and "res judicata" to defeat the civil rights of petitioners. These Constitutional rights here, to have a public hearing and to due process of law, should prevail and these rights should remain inviolate.

4-Relief Requested by Petitioners

Petitioners ask the Court for the following relief: (1) an order directing the City to hold a public hearing on the 1984 tax increase or an order directing the trial court to proceed with the case; (2) order denying City's cross-appeal seeking damages under Rule 49.2; (3) an award to

Petitioners of court costs and damages under Rules 49.2 and 50 and (4) an award to be set by lower courts for sanctions, fees and costs based on Petitioners being the prevailing party and being victims of abuse due to denial of their civil rights.

Respectfully submitted,

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Exhibit A

* * *

recover from a surety a judgment against an insolvent principal.

Second, in the Texas court system there exists a pattern of granting summary judgments by trial judges in civil suits when dismissal is not justified. The instant case is not a solitary error. This arbitrary action of trial judges is common practice in the court system. Upon appeal the dismissals are usually affirmed. This arbitrary type of action by Texas courts tc clear up their dockets is common. This practice serves to deny litigants, both plaintiffs and defendants, access to courts. In turn numerous persons are thereby denied their rights under the Due Process Clause.

Third, a state appellate court has erred, rendering two judgments which are clearly inconsistent in result. As a result, sustaining the trial court's dismissal of this case resulted in denial of due process to Appellant. The inconsistent application of law here by the

* * *

Exhibit B

CORPUS CHRISTI TAXPAYERS ASS'N
v
CITY OF CORPUS CHRISTI

STATE OF TEXAS
COUNTY OF NEUCES

AFFIDAVIT
as to
GRANTING OF SUMMARY JUDGMENTS
BY TEXAS TRIAL JUDGES

Before me the undersigned authority on this day personally appeared, Glynn A. Pugh, to me well known, who, after being duly sworn, did depose and say as follows:

Counsel for Petitioners on April 10, 1989 interviewed a respected Nueces County trial judge with more than eight years of service regarding the practice of granting summary judgments by trial court judges. That judge made in substance the following statements:

1- Texas trial judges find themselves with many cases on their docket, and they seek to reduce their number.

2- It is common practice of Texas trial judges to purge long docket lists. A principal way of doing this is by the granting of summary judgments, which is done arbitrarily in the sole discretion of each judge.

3- It is common practice in Texas for a trial judge to dismiss any case which he personally dislikes, or has a particular aversion to in some way or other.

4- These dismissals by trial courts are done completely at the personal whim of each trial court judge.

5- A review of dismissals made by Texas trial courts should indicate the majority of them as being arbitrary, illogical and without regard to law. This practice, consisting of gross abuse of discretion, is unconscionable.

/s/ Glynn A. Pugh

SWORN TO and subscribed before me this 21st day of April, 1989.

/s/ Jan C. Titus
Notary Public, State of Texas

Printed name: Jan C. Titus
My commission expires: 3/31/90